

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WADE KNIGHT,

Petitioner,

v.

JULIE CAVANAUGH-BILL ,

Respondent.

Case No. 3:14-cv-00209-MMD-WGC

ORDER

Petitioner has filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. The Court has reviewed the complaint pursuant to 28 U.S.C. § 1915. The Court cannot grant petitioner monetary relief. The Court will give petitioner one more opportunity to file a habeas corpus petition pursuant to 28 U.S.C. § 2254 in this action.

Petitioner is trying to sue his attorney in a criminal case, Julie Cavanaugh-Bill, for monetary damages because she filed a notice of appeal from a judgment of conviction one day late. To recover monetary damages in a civil rights action pursuant to 42 U.S.C. § 1983, the defendant must have acted under color of state law. A criminal defense attorney does not act under color of state law in the course of representing a person in criminal proceedings. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). Petitioner cannot recover monetary damages.

If petitioner's allegations are proven to have merit, he might be able to obtain relief from his judgment of conviction through a petition for a writ of habeas corpus. Even if Cavanaugh-Bill did act under color of state law, petitioner's success would


1 necessarily imply the invalidity of his judgment of conviction, and plaintiff cannot sue for
2 monetary damages unless and until his judgment of conviction has been invalidated
3 through other means. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Petitioner
4 needs to file a habeas corpus petition on the correct form, because the § 1983
5 complaint form does not contain all the information that the Court needs. The Court will
6 give petitioner one last opportunity to file that petition.

7 It is therefore ordered that the application to proceed *in forma pauperis* (dkt. no.
8 14) is granted. Petitioner need not pay the habeas corpus filing fee of five dollars
9 (\$5.00).

10 It is further ordered that the Clerk of the Court will send petitioner a petition for a
11 writ of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner will
12 have thirty (30) days from the date that this order is entered in which to file an amended
13 petition to correct the noted deficiencies. Neither the foregoing deadline nor any
14 extension thereof signifies or will signify any implied finding of a basis for tolling during
15 the time period established. Petitioner at all times remains responsible for calculating
16 the running of the federal limitation period under 28 U.S.C. § 2244(d)(1) and timely
17 asserting claims. Failure to comply with this order will result in the dismissal of this
18 action.

19 It is further ordered that petitioner must place the case number, 3:14-cv-00209-
20 MMD-WGC, in the space provided on the petition form.

21 DATED THIS 4th day of November 2015.

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24 MIRANDA M. DU
25 UNITED STATES DISTRICT JUDGE
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